BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

A
Opinion of the Court Below

The opinion of the Supreme Judicial Court of the Commonwealth of Massachusetts is not yet officially reported, but appears in Vol. ... of the Atlantic Reports (Second Series) at page ... and also appears in the Record at pages 12 to 17.

B
Jurisdiction

1. *Timeliness.*

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code [28 USCA 344 (b)].

The judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts was rendered and entered of record on the 5th day of April, 1941. (R. 8, 12)

The petition for writ of certiorari is filed herein before the expiration of three months from the date the decree and judgment of said Supreme Judicial Court was rendered and entered, which is within the time allowed by law.

2. *The Statute.*

The validity of state legislation under the United States Constitution was drawn into question in this case and the decisions of each of the courts below were wrongfully in favor of its validity. The legislation challenged here is a statute of the General Laws of the Commonwealth of Massachusetts (Acts of 1907, Chapter 584, as amended by Acts of 1909, Chapter 329) known as "An Act Relative

to the Use of Public Streets in the City of Boston for the Storage and Sale of Merchandise".

The entire statute appears herein at pages 5 to 10, inclusive, supra, and is described and referred to in the Record at pages 12 to 17 (opinion of the Supreme Judicial Court).

In holding that the statute is not unconstitutional because it abridges freedom of speech, press and worship in violation of the Fourteenth Amendment to the United States Constitution, the Supreme Judicial Court of the Commonwealth of Massachusetts held that the statute properly applied to the activity of petitioner and decided in favor of its validity on its face and as so applied. (R. 12-17)

Petitioner duly and properly alleged in all the courts below that said statute on its face and as applied was invalid because it deprived him of his rights secured by the United States Constitution.

From the very beginning, therefore, the validity of the legislation here challenged as being in contravention to the Fourteenth Amendment was thus drawn in question. The judgments of the trial courts were in favor of the validity of such statute; also the judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts was wrongfully in favor of its validity.

C

Statement of the Case

A full statement of the case has been given herein (supra, pages 1 to 11) and, for the sake of brevity, will not be repeated, but is here referred to.

D

Specification of Errors

Petitioner assigns the following errors in the record and proceedings of said case:

The Supreme Judicial Court of the Commonwealth of Massachusetts committed fundamental error in affirming the judgment of the Superior Court and in holding that the petitioner was guilty of a violation of said statute of the Commonwealth because the statute is invalid, as construed and applied by the courts below, in that it deprives petitioner of his right of freedom of press, speech, conscience and of worship of Almighty God as commanded by Him in the Bible, contrary to the "due process" clause of the Fourteenth Amendment to the United States Constitution.

And for these reasons it is reversible error for the Supreme Judicial Court of the Commonwealth of Massachusetts to refuse to set aside the judgment of conviction rendered by the Superior Court and in holding that the statute was valid and constitutional.

The Supreme Judicial Court errs in holding that the statute as applied was a proper and valid exercise of the police power.

PRELIMINARY ARGUMENT

It is to be noted that the opinion, in addition to being extremely unsound and a radical departure from the applicable decisions of this Court in *Cantwell* v. *Connecticut,* supra, *Schneider* v. *Irvington,* supra, and *Lovell* v. *Griffin,* supra, the decision is also in conflict directly with the following opinions and decisions declaring such laws invalid as applied to the above described activity of Jehovah's witnesses in preaching the Gospel of God's Kingdom, that is to say, the cases of *People* v. *Kieran et al.,* 26 N. Y. S.

(2) 291, *Tucker* v. *Randall* (N. J.), 15 A. (2) 325, *Commonwealth* v. *Anderson* (Mass.), 32 N. E. (2) 684, *City of Gaffney* v. *Putnam* (South Carolina Supreme Court opinion rendered June 2, 1941, unreported at time of this writing), *Semansky* v. *Stark, Sheriff,* 199 So. 129 (La.), *Thomas* v. *Atlanta,* 59 Ga. App. 520, 1 S. E. 2d 598, *Cincinnati* v. *Mosier,* 61 Ohio App. 81, *California* v. *Northum et al.,* 103 Cal. Supp. 295, 41 C. A. 2d 284, *Village of South Holland* v. *Stein,* 26 N. E. (2) 868 (Ill.). Each of the above cases involve Jehovah's witnesses shown to have been receiving contributions for the literature and working in the same way as petitioner was doing it; and the ordinances and laws there held to be unconstitutional are very similar to the statute here drawn in question.

ARGUMENT

The statute in question is invalid and unconstitutional as construed and applied by the courts below in that it deprives petitioner of his right of freedom of press, of speech, of conscience and of his right to worship Almighty God as commanded by Him in the Bible, contrary to the due process clause of the Fourteenth Amendment to the United States Constitution.

The pernicious doctrine that constitutionally secured "free press" extends only to "*free* distribution" (or "gift") of literature is a new theory unheard of until modern-day totalitarian principles have pushed to the fore. Such erroneous claim means that a person would be entitled to the protection of the constitutional guarantees of freedom of press against statutes such as this if he gave away printed matter, but if he "sold" such matter he would not be entitled to this fundamental personal privilege. The claim is,

therefore, *foolish.* Newspapers, magazines and other periodicals are sold daily on the streets and elsewhere in every community of this land. Money is received in exchange. The newspaper industry is a profitable one and many have grown wealthy through it. They are entitled to all the guarantees of freedom of the press, even though they do gain great wealth through it. One who is doing good, such as the petitioner here, by constantly and continuously bringing printed matter on subjects of great importance to the attention of the public through "press activity" is entitled to let those receiving the information aid in keeping the "good work alive and going" by contributing a small sum with which to print more like literature. It is a ridiculous stalemate to hold that one must "go bankrupt" by forced "free" distribution of literature in order to receive the "free press" protection of the Constitution. Such a reprehensible contention, if permitted to stand, means the "death toll" to freedom of press in America. The taking of money for the literature is only incidental to the main activity of petitioner. It is a means to an end, that is to say, further proclamation of the Kingdom message of Almighty God.

In the case of *Cantwell* v. *Connecticut,* supra, the Connecticut Supreme Court of Errors attempted to distinguish the conviction under the solicitation statute on the grounds that 'it was the soliciting contributions' that brought them within the terms of the statute, "and not their more predominant activity of distributing literature." That doctrine was rejected by this Court. The opinion in the instant case is also contrary to *Schneider* v. *Irvington,* supra, where the undisputed evidence showed that one of Jehovah's witnesses received money contributions for books and was prosecuted under the ordinance "because she canvassed without a permit".

The undisputed evidence shows that the right which petitioner exercises is that of worshiping Almighty God by acting as an *ordained minister* in preaching the Gospel,

and also press activity, and the action of the Boston authorities in arresting and prosecuting him is in excess of their lawful authority; and it is the unconstitutional application of said statute to petitioner's activities that invalidates it.

It will be recalled that in the case of *Concordia Fire Insurance Co.* v. *Illinois,* 292 U. S. 535, 545, the court said:

> "Whether a statute is valid or invalid under the equal protection clause of the Fourteenth Amendment often depends on how the statute is construed and applied. It may be valid when given a particular application and invalid when given another."

The petitioner is an *ordained minister* of the Gospel of God's Kingdom or Theocracy, which is a righteous government that will be fully established in the earth very shortly. He possesses credentials showing his ordination. He has entered into a covenant or agreement with Almighty God as provided in Isaiah 61:1, 2 and other scriptures to do the will of Almighty God, which is to preach or proclaim the judgments of Almighty God and His message of hope recorded in the Bible, to all people of good-will toward Almighty God. In order to enable such persons to flee from the Devil's organization to The Theocracy, and thus receive everlasting life under such righteous government, which will bring peace, prosperity and happiness to all who survive the battle of Armageddon — near at hand — Jehovah's witnesses preach the Gospel publicly throughout the land. To enable the petitioner to effectively thus preach the Gospel 'publicly and throughout every city until the cities are desolate' (Isaiah 6:11) the petitioner uses books, booklets, magazines and pamphlets which contain the entire message. This literature he employs as a substitute for talking, or sermons, and which is more effective because it can be studied by the recip-

ients in the quiet of the home. Thus much time is saved and more people are reached.

In thus acting, the petitioner is a duly ordained minister of the Gospel of Jehovah God's Kingdom. It cannot properly be said that such conduct does not constitute a proper worship or service of Almighty God. This showing is conclusive upon all concerned in the matter. Furthermore, this Court has held that the individual alone is privileged to determine what he shall or shall not believe and how he shall exercise his right of conscience in performing such belief. The law of this land does not attempt to settle differences of creed and confession, and will not say that any point, doctrine or practice is too absurd to be believed. *Reynolds* v. *United States,* 98 U. S. 145, 162, quoting from Jefferson's Virginia Statute of Religious Freedom; also, *United States* v. *Macintosh,* 283 U. S. 605, 634.

If the practice or belief does not involve a violation of the law of morals, invade the right of property, and imperil, by clear and present danger, the safety of the nation and state, then such cannot be interfered with by any kind or character of statute, whether valid or invalid. Being bound by the conclusion that petitioner is an *ordained minister,* what is next presented?

Attention of this Court is kindly drawn to the case of *Thomas* v. *City of Atlanta,* supra, where one of Jehovah's witnesses was convicted under an ordinance prohibiting peddling without a license. In reversing the conviction, the Georgia Court of Appeals said:

> "We do not think it is the duty of an ordained minister of the gospel to register his business with the city. Neither is it peddling for such minister to go into homes and play a victrola, or to preach therein or to sell or distribute literature dealing with his faith if the owner of such home does not object. The preaching and teaching of a minister of a religious sect is

> not such a business as may be required to register and obtain and pay for a license so to do. Neither is a sale by such minister of tracts or books connected with his faith a violation of a statute against peddling. Under the evidence in this case the sale of the book was collateral to the main object of the defendant, which was to preach and to teach his religion."

To the same effect is *Village of South Holland* v. *Stein,* supra, *Semansky* v. *Stark,* supra, *Cincinnati* v. *Mosier,* supra, *Schneider* v. *Irvington,* supra, *Cantwell* v. *Connecticut,* supra.

The Commonwealth of Massachusetts has no more authority to require petitioner, one of Jehovah's witnesses, to register with the Commissioners than it would to require the religious priests, religious clergy and religious rabbis of Boston to register as a condition precedent to giving their sermons and conducting their different religions in the City. It is clearly apparent that such statute cannot be applied so as to interfere with or deprive petitioner of his right of worship. This is the petitioner's way of worship and it cannot be denied because none of the exceptions can be found to exist which would warrant the denial of such right.

The *way* of worshiping Almighty God as done by the petitioner in this case is commanded by the written law of Almighty God. God's law is supreme. This rule is recognized by Blackstone in his *Commentaries* (Chase 3d ed., pp. 5-7). See also Cooley's *Constitutional Limitations,* 8th ed., p. 968. Petitioner greatly desires to have life and to live, and therefore he must serve Almighty God; for it is written that God is the fountain of life. (Psalm 36:9) One who desires to live must obey God's law. (John 17:3) Petitioner stands in the same position as the apostles of Jesus Christ who, when haled before magistrates and requested to discontinue their preaching the Gospel from house to house, as they did at the time of their arrest, and when

ordered to desist, told the court, "We ought to obey God rather than men." (Acts 5:17-42) Thereafter, as it is written concerning them, "daily in the temple, and in every house, they ceased not to teach and preach Jesus Christ." —Acts 5:42.

Should the petitioner cease to proclaim the written judgments of Almighty God by yielding to threats of police officials or for any other reason, he would violate the agreement previously made by him to obey the law of Almighty God, who commands such proclamation to be made now, irrespective of persecution; and petitioner would thereby subject himself to everlasting destruction, as he verily believes. See Ezekiel 33:8, 9; Acts 3:22, 23.

The petitioner refused to apply for a permit or license because he is an *ordained minister* of Almighty God, preaching the Gospel, and did not come within the provisions of the statute, and furthermore he chose to follow in the footsteps of the Master, Christ Jesus, and His apostles, who preached "publicly and from house to house" and who steadfastly refused to get "permits" from the "state" of their day, and refused to discontinue preaching when requested by the state to discontinue.

It would be an insult to Almighty God to apply to some man of the world, which is ruled over by Satan, for a permit or license to do that which God has *commanded* to be done at the pain of everlasting death for refusal or failure on the part of Jehovah's witnesses to so preach, as He has plainly commanded.

Tested in the light of the standards contained in the cases cited above, it becomes obvious that the statute (Acts of 1907, Chapter 584, as amended) under which the petitioner was convicted, cannot stand the test of the Fourteenth Amendment to the Constitution because on its face and as applied in this case there is a clear infringement by "prior censorship" of the press.

(1) Section 1 of the statute is unconstitutional since

the issuance of the license by the street commissioners is *permissive* and not *mandatory*. Further, it permits a limitation of the situs in which distribution may be carried on.

(2) Section 2 is unconstitutional for the reason that it requires one who wishes to distribute publications or leaflets to obtain the *permission and written consent* not only of the owner, but of the ground floor tenant in front of whose premises such distribution is to be made. By this provision not only is the board of street commissioners able to censor previously the distribution, but every ground floor tenant, and every owner of real estate, can exert a censorship that would literally prevent the distribution and circulation of views different from his own.

(3) Section 3 is unconstitutional in that it makes the issuance of the permit dependent on the approval or disapproval of still another potential censor, the police commissioner.

(4) Section 4 is unconstitutional because it requires the concurrence in opinion of the street commissioners and the police commissioner. In controversial matters of the public opinion, it is entirely possible that such concurrence cannot be obtained. To condition the right to freedom of the press upon the agreement of two censors is an unwarranted burden upon that right.

(5) Section 5 is unconstitutional in that it provides that the license "may be suspended or revoked for any reason which said board shall consider sufficient".

(6) Section 6 makes it possible for the Board of Street Commissioners to charge a fee of not more than One Hundred Dollars ($100.00) for such license, as well as a charge for rent in some instances. The right to freedom of the press is not within the intendment of our Constitution a right to be bought or sold.

(7) Section 9 permits the police commissioner to "des-

ignate from time to time certain streets, or parts of streets, or sections of the city wherein, and not elsewhere in the city, it shall be lawful on the days and within the hours specified by him and under such general rules as he shall make . . . without the license provided for in this act to stop or stand for the purpose of selling. . . . "

This section, although it permits the sale or distribution without a license, permits it subject to such restrictions as to time, place and manner as to render it unconstitutional under the cases cited.

Furthermore, it is clear that the activity of the petitioner was activity of the press and was and is such press activity protected by the Constitution. The streets are the natural and proper places for the dissemination of such information (*Schneider* v. *Irvington,* supra) and this right cannot be denied or abridged on the theory that it can be better exercised elsewhere. The conveniences of the City of Boston to keep desired conditions on the streets do not warrant licensing or abridgment. (*Schneider* v. *Irvington,* supra, *Cantwell* v. *Connecticut,* supra, *Hague* v. *C. I. O.,* 307 U. S. 496) The duty of the officials to maintain order does not warrant the prior censorship of the press which is permitted by the application of the statute to the facts in this case. *Hague* v. *C. I. O.,* supra, *Thornhill* v. *Alabama,* 310 U. S. 88, 95, *Grosjean* v. *American Press Company,* 297 U. S. 233, *De Jonge* v. *Oregon,* 299 U. S. 353, 364, *Stromberg* v. *California,* 299 U. S. 233, *Near* v. *Minnesota,* 283 U. S. 697, 707.

CONCLUSION

It is therefore submitted that this case is one calling for the exercise by this Court of its supervisory powers to the end that errors complained of may be corrected and that to such end a writ of certiorari ought to be granted that this Court review the decision of the Supreme Judicial Court of the Commonwealth of Massachusetts.

Confidently submitted,

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